



Excise Tax Advisory

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DEEDS OF TRUST--TRUSTEE FEES

Issued November 18, 1966

Are fees collected by a title insurance company when acting as a trustee of a Deed of Trust subject to Retail Sales Tax?

RCW 82.04.050 defines "sale at retail" or "retail sale" to include:

" . . . the sale of or charge made for personal business or professional services, including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities: . . . abstract, title insurance and escrow businesses."

The 1965 legislature enacted the "Trust Deed Act" which provides an alternative to the ordinary real estate mortgage method of financing sales of real property. The act provides that title, abstract, escrow businesses or attorneys may be appointed trustees of the Trust Deed. The taxpayer, a title insurance company, questioned whether fees received for services performed as a trustee under the act should be subjected to the Retail Sales Tax because this is not the type of service the legislature contemplated when it established title insurance as a service subject to Sales Tax.

The Tax Commission ruled that such trustee fees were not subject to Sales Tax. It also recognized that the trustee performed no real service until such an event as reconveyance or foreclosure occurred. The Commission held that such services performed pursuant to a Deed of Trust are entirely unrelated to title insurance business. However, fees earned as a trustee of a Deed of Trust are taxable under the "Service and Other Activities" classification of the Business and Occupation Tax. (Letter.)

ETBS have been made Excise Tax Advisories, and have retained their old number. Advisories with a 2 (plus three digits) are new advisories, ETBs that have been revised and readopted after review under the Department's regulatory improvement program, or advisories that have been revised and/or readopted.

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Please direct comments to:
Department of Revenue
Legislation & Policy Division
P O Box 47467
Olympia, Washington 98504-7467
(360) 753-4161 eta@DOR.wa.gov